

STATE OF INDIANA FILED IN IN THE LAKE COUNTY CIRCUIT COURT
CLERK'S OFFICE
COUNTY OF LAKE)
06 JAN 17 PM 3 25 CAUSE NO. 45D100601PL00007

STATE OF INDIANA THOMAS R. PHILPOT
CLERK LAKE SUPERIOR COURT)
Plaintiff, .)
v.)
HOLLY CURSKI,)
Defendant.)

**COMPLAINT FOR BREACH OF CONTRACT, INJUNCTION, RESTITUTION,
COSTS, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, for its claim against the Defendant, Holly Curski, states the Defendant is in breach of a contract with the Indiana Attorney General, and further petitions the Court, pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this Complaint, the Defendant, Holly Curski, was an individual engaged in the sale of items via the Internet and resided in Lake County at 8207 Kooy Drive Munster, Indiana, 46321.

CERTIFIED MAIL
POST MARKED JAN 11 2006

FACTS

3. Since at least February 13, 2004, the Defendant, Holly Curski, has offered items for sale to consumers via the Internet.

A. Allegations related to the Assurance of Voluntary Compliance

4. On September 30, 2005, the Lake Circuit Court approved an Assurance of Voluntary Compliance ("AVC") between the Indiana Attorney General and the Defendant, Holly Curski. Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the AVC between the parties.

5. The AVC states in relevant part, "Upon execution of this Assurance, the [Defendant, Holly Curski] shall pay consumer restitution in the amount of Six Hundred Thirty-Four Dollars (\$634.00) to the Office of the Attorney General on behalf of Nanci London of Leawood, Kansas."

6. The AVC further states in relevant part, "Upon execution of this Assurance, the Respondent shall pay costs in the amount of Five Hundred Dollars (\$500.00) to the Office of the Attorney General."

7. Since September 20, 2005, the Defendant has refused, or otherwise failed to pay the balance of the consumer restitution, and has refused, or otherwise failed to pay the costs portion of the AVC.

B. Allegations Related to Consumer Ross Mangum's Transaction.

8. On or about May 9, 2004, the Defendant entered into a contract via the Internet with Ross Mangum ("Mangum") of Albany, Oregon wherein the Defendants represented she would sell two (2) adult Disney World park hopper plus tickets to

Mangum for Four Hundred Twenty Seven and 50/100 Dollars (\$427.50), which Mangum paid.

9. While the Defendant did ship the tickets to Mangum, when Mangum attempted to use the tickets sent by the Defendant, he learned the tickets were invalid, as the tickets had never been activated.

10. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale she would deliver valid tickets within a reasonable period of time.

11. The Defendant has yet to either ship valid tickets, or to provide a refund to Mangum.

C. Allegations Related to Consumer Nanci London's Transaction.

12. On or about September 1, 2004 the Defendant, Holly Curski, entered into a contract via the Internet with Nanci London ("London") of Leawood, Kansas, wherein the Defendant represented she would sell two (2) adult seven day park hopper tickets for Walt Disney World to London for Six Hundred Thirty Four Dollars and 04/100 Dollars (\$634.04), which London paid.

13. While the Defendant did ship the tickets to London, when London attempted to use the tickets sent by the Defendant, she learned the tickets were invalid, as the tickets had been stolen from a Disney retail store.

14. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale she would deliver valid tickets within a reasonable period of time.

15. The Defendant has yet to either ship valid tickets, or to provide a refund to London.

D. Allegations Related to Consumer Colleen Lewis's Transaction.

16. On or about September 9, 2005, the Defendant, Holly Curski, entered into a contract via the Internet with Colleen Lewis ("Lewis") of Minnedosa, Canada, wherein the Defendant represented she would sell four (4) adult Disney Magic Your Way Hopper tickets to Lewis for Nine Hundred Fifty-Eight and 92/100 Dollars (\$958.92), which Lewis paid.

17. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale she would deliver the tickets to Lewis within a reasonable period of time.

18. After contacting PayPal, an Internet payment service, Lewis received a partial refund of One Hundred and Seventy-Five Dollars (\$175.00).

19. The Defendant has yet to either provide a full refund, or to ship the tickets to Lewis.

COUNT I- VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

20. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 above.

21. The transactions referred to in paragraphs 8, 12, and 16, are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

22. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

23. The Defendant's representations to consumers she would sell items to consumers, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, as referenced in paragraphs 8, 12, and 16, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

24. The Defendant's representations to consumers the tickets she sold were valid, or were otherwise of a particular standard or quality, when the Defendant knew or reasonably should have known the tickets were not, as referenced in paragraphs 8 and 12, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(2).

25. The Defendant's representations to consumers the Defendant would deliver the items, or otherwise complete the subject matter of the consumer transactions within a reasonable period of time, when the Defendant knew or reasonably should have known she would not, as referenced in paragraphs 10, 14, and 17, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

26. The Defendant's representations to the consumers they would be able to purchase the items as advertised by the Defendant, when the Defendant did not intend to sell the items as represented, as referenced in paragraphs 8, 12, and 16, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II-KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

27. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

28. The misrepresentations and deceptive acts set forth in paragraphs 8, 9, 10, 12, 13, 14, 16, and 17, were committed by the Defendant with the knowledge and intent to deceive.

COUNT III-BREACH OF CONTRACT

29. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 28 above.

30. By failing to abide by the terms of the Assurance of Voluntary Compliance and not paying the consumer restitution and costs, as referenced in paragraph 7, the Defendant has breached her agreement with the Indiana Attorney General's Office.

31. As a result of the Defendant's breach, the Indiana Attorney General's Office, as well as the consumers benefiting from the Assurance of Voluntary Compliance, have been damaged.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Holly Curski, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have;
- b. representing expressly or by implication the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the Defendant knows or should reasonably know that it is not;

c. representing expressly or by implication the Defendant is able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know she cannot; and

d. representing expressly or by implication a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Holly Curski, for the following relief:

a. cancellation of the Defendants' unlawful contracts with consumers, including but not limited to the persons identified in paragraphs 8, 12, and 16, pursuant to Ind. Code § 24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of the Defendant's items via the Internet, including but not limited to, the persons identified in paragraphs 8, 12, and 16, in an amount to be determined at trial;

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

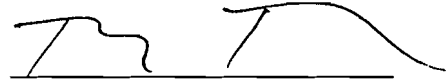
d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;

- e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;
- f. on Count III of the Plaintiff's complaint, consumer restitution in the amount of Six Hundred Thirty-Four Dollars (\$634.00) to the Office of the Attorney General on behalf of Nanci London of Leawood, Kansas;
- g. on Count III of the Plaintiff's complaint, costs of Five Hundred Dollars (\$500.00); and
- h. all other just and proper relief.

Respectfully Submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:



Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of the Attorney General
Indiana Government Center South
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STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE COUNTY CIRCUIT COURT

CAUSE NO. 45C01 509M100125

IN RE: HOLLY CURSKI)
)
Respondent.)

AVC NO. 05-039

Filed in Open Court

SEP 30 2005

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General *Thomas R. Phipps*
CLERK LAKE CIRCUIT COURT

Terry Tolliver, and the Respondent, Holly Curski enter into an Assurance of Voluntary Compliance ("Assurance"), pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes *prima facie* evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. The Respondent is an individual, residing at 8207 Kooy Drive Munster, IN 46321, and transacts business with consumers via the Internet.
2. The terms of this Assurance apply to and are binding upon the Respondent, her employees, agents, representatives, successors, and assigns.
3. The Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Indiana Code § 4-6-9-4 and Indiana Code § 24-5-0.5-1, *et seq.*
4. The Respondent acknowledges she has been advised that the Attorney General's role in this matter is to serve as counsel for the State of Indiana and the State of Indiana has not given the Respondent any legal advice regarding this matter. The Respondent expressly



acknowledges the State of Indiana has previously advised the Respondent to secure legal counsel prior to entering into this Assurance for any legal advice the Respondent requires.

5. The Respondent, in soliciting and/or contracting with consumers, agrees to refrain from representing, either orally or in writing, the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Respondent knows or should reasonably know it does not have.

6. The Respondent, in soliciting and/or contracting with consumers, agrees to refrain from representing, either orally or in writing, she is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when she knows or reasonably should know she cannot.

7. The Respondent, in soliciting and/or contracting with consumers, agrees to refrain from representing, either orally or in writing, the consumer will be able to purchase the subject of the consumer transaction as advertised by the Respondent, if the Respondent does not intend to sell it.

8. The Respondent, in soliciting and/or contracting with consumers, agrees to fully comply with the Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*

9. Upon execution of this Assurance, the Respondent shall pay consumer restitution in the amount of Six Hundred Thirty-Four Dollars (\$634.00) to the Office of the Attorney General on behalf of Nanci London of Leawood, Kansas.

10. Upon execution of this Assurance, the Respondent shall pay consumer restitution in the amount of One Hundred Forty-Four Dollars (\$144.00) to the Office of the Attorney General on behalf of Rebecca Green of Sacramento, California.

11. Upon execution of this Assurance, the Respondent shall pay costs in the amount of Five Hundred Dollars (\$500.00) to the Office of the Attorney General.

12. The Respondent shall not represent the Office of the Attorney General approves or endorses the Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

13. The Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

14. The Office of the Attorney General shall file this Assurance with the Circuit Court of Lake County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 10 day of September, 2005.


STATE OF INDIANA

RESPONDENT

STEVE CARTER
Indiana Attorney General


HOLLY CURSKI

By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49
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APPROVED this 30 day of SEPT, 2005.


Judge, Lake County Circuit Court

Distribution:

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